

HOUSE LABOR AND HUMAN RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 811

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO EMPLOYMENT; ENACTING THE ACCESS TO QUALITY CHILD
CARE WORKFORCE ACT; PROVIDING A PROCESS FOR REPRESENTATION FOR
EMPLOYEES OF NONRESIDENTIAL CHILD CARE CENTERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Access to Quality Child Care Workforce Act".

Section 2. FINDINGS--PURPOSE.--

A. The legislature finds that child care centers
perform an essential service in this state. Child care centers
should be given the option to organize themselves into one
statewide unit and select a representative to work in
conjunction with other early childhood advocacy organizations
for the purpose of discussing with the state the conditions of
their employment, including the stability, funding and

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1 operation of child care programs and the expansion of quality
2 child care.

3 B. The purpose of the Access to Quality Child Care
4 Workforce Act is to allow child care centers to organize into
5 one statewide unit and bargain collectively with the department
6 and to provide state action immunity under federal and state
7 antitrust laws for the joint activities of those caregivers and
8 their exclusive bargaining representative to the extent such
9 activities are authorized. The purpose of the Access to
10 Quality Child Care Workforce Act is not to modify the rights of
11 employers and employees under the National Labor Relations Act,
12 but to retain the state action exemption to the application of
13 federal and state antitrust laws to the extent that the
14 activities of the caregivers and their representative are
15 authorized under the Access to Quality Child Care Workforce
16 Act.

17 Section 3. DEFINITIONS.--As used in the Access to Quality
18 Child Care Workforce Act:

19 A. "board" means the public employee labor
20 relations board;

21 B. "caregiver" means an individual over the age of
22 eighteen who directly cares for, serves and supervises children
23 in a child care center and includes the directors of a child
24 care center;

25 C. "child care center" means a facility that:

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1 (1) employs caregivers in a nonresidential
2 setting;

3 (2) provides care, services, education and
4 supervision to children for less than twenty-four hours per
5 day;

6 (3) receives state subsidies;

7 (4) is licensed by the department; and

8 (5) is a nongovernmental entity;

9 D. "department" means the children, youth and
10 families department;

11 E. "designated unit representative" means a labor
12 organization that is certified by the board to represent all
13 caregivers for the purpose of bargaining collectively with the
14 department;

15 F. "labor organization" means an employee
16 organization whose purpose is the representation of the unit in
17 meetings and consulting and conferring with the state on
18 matters pertaining to the Access to Quality Child Care
19 Workforce Act; and

20 G. "unit" means all caregivers and child care
21 centers.

22 Section 4. DEMONSTRATION OF MAJORITY DESIGNATION.--

23 A. A labor organization seeking to be certified as
24 the designated unit representative of the unit shall submit
25 authorization cards approving the labor organization's

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1 representation, signed within twelve months of their submission
2 by the majority of caregivers constituting the unit, to the
3 board.

4 B. The board or its designee shall review the
5 authorization cards and, upon a determination that a majority
6 of the caregivers in the unit have designated a labor
7 organization to be the designated unit representative, shall
8 certify that labor organization as the designated unit
9 representative.

10 C. If the board determines that at least thirty
11 percent, but no more than fifty percent, of the caregivers in
12 the unit have designated a labor organization to be the
13 designated unit representative, the unit shall conduct an
14 election in a manner directed by the board and consistent with
15 mail-in ballot election procedures. If the majority of
16 caregivers in the unit elects a labor organization as the
17 designated unit representative, the board shall certify that
18 labor organization as the designated unit representative.

19 D. State agencies, including the department, shall
20 provide the board with any information reasonably necessary to
21 determine the size of the unit and the identities of the unit's
22 members within ten business days of a written request for the
23 information. The board shall take all necessary steps to
24 protect the confidentiality of unit member information,
25 including requiring limitations on dissemination of

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1 information.

2 E. A person seeking to challenge the certification
3 of the designated unit representative may submit information to
4 the board indicating that a majority of the unit members wish
5 to be represented by a different representative, or do not wish
6 to be represented under the terms of the Access to Quality
7 Child Care Workforce Act. The board shall determine whether
8 the information provides a reasonable basis for such a
9 conclusion. The board may adopt a process to verify that all
10 procedures leading to the certification of the designated unit
11 representative are properly followed, including a review of the
12 submission of authorization cards and of the election. The
13 board may review a challenged certification unless a review had
14 been made within the previous two years.

15 Section 5. NEGOTIATIONS.--

16 A. The department shall meet with the certified
17 designated unit representative for the purpose of entering into
18 a written agreement. The agreement may address the following
19 issues:

- 20 (1) the stability, funding and operation of
21 child care programs;
- 22 (2) expansion of quality child care;
- 23 (3) improvement of learning environments;
- 24 (4) state subsidies;
- 25 (5) health and retirement benefits or

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1 payments;

2 (6) professional development and training;

3 (7) committees; and

4 (8) grievance procedures related to the
5 application of department regulations and child care center
6 licensing.

7 B. If the issues discussed pursuant to Subsection A
8 of this section require the participation or approval of other
9 state agencies, those agencies shall participate in the
10 discussions.

11 C. Any agreement reached by the parties to a
12 negotiation shall be reduced to a written agreement. If an
13 agreement is reached, the department shall submit as a part of
14 its proposed yearly operating budget a request for funds
15 necessary to implement the agreement or for legislation
16 necessary to implement the agreement. If adequate funds are
17 not available to implement an agreement, the agreement shall be
18 reopened solely for the purpose of renegotiating the funding
19 necessary to implement the agreement.

20 D. If any provision of the agreement requires
21 legislative action, including the appropriation of funds, in
22 order to be effective, the parties to the agreement shall
23 jointly seek legislation or appropriation.

24 E. In the event any dispute arises under the terms
25 of the Access to Quality Child Care Workforce Act, on the

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1 application of the designated unit representative, the
 2 department or any other involved state agency, the board may
 3 direct the parties to engage in binding arbitration for non-
 4 economic issues under such terms and conditions as the board
 5 deems appropriate.

6 F. After the expiration date of an agreement
 7 entered into under this section, all of the terms and
 8 conditions specified in the agreement shall remain in effect
 9 until the effective date of a subsequent agreement between the
 10 parties to the original agreement.

11 G. If a significant revenue shortfall occurs
 12 resulting in reduced appropriations after the compensation and
 13 benefit provisions of an agreement are approved, the parties to
 14 the agreement shall immediately enter into negotiations for a
 15 mutually agreed modification of the agreement.

16 Section 6. LIMITATIONS.--Nothing in the Access to Quality
 17 Child Care Workforce Act shall:

18 A. permit caregivers collectively to engage in any
 19 strike or work action to secure any right or privilege from the
 20 state or any of its agencies or political subdivisions and to
 21 preclude workers from their right to strike pursuant to the
 22 National Labor Relations Act;

23 B. interfere with any right a child care center or
 24 any organization that represents the child care center may
 25 otherwise have to meet, correspond with or otherwise appear

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1 before a state agency; or

2 C. allow the department to discriminate against a
3 child care center because the caregivers are represented by the
4 designated unit representative.

5 Section 7. SEVERABILITY.--If any part or application of
6 the Access to Quality Child Care Workforce Act is held invalid,
7 the remainder of its application to other situations or persons
8 shall not be affected.

9 Section 8. PREEMPTION.--If any part of the Access to
10 Quality Child Care Workforce Act is found to be in conflict
11 with federal requirements that are a condition to the
12 allocation of federal funds to the state, the conflicting part
13 of the Access to Quality Child Care Workforce Act is
14 inoperative solely to the extent of the conflict and with
15 respect to the agencies directly affected, and this finding
16 does not affect the operation of the remainder of the Access to
17 Quality Child Care Workforce Act in its application to the
18 agencies concerned. Rules adopted under that act shall meet
19 federal requirements that are a necessary condition to the
20 receipt of federal funds by the state.